IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 102 OF 1997

Harischandra Zitu Mhatre
Resident of Walke,
Taluka Murud, District Raigad ..Applicant
V/s
The State of Maharashtra ..Respondent.

Mr. S.S. Deshmukh, Advocate for the applicant.

Ms. Sharvari Shailendra, Advocate i/b P.S. Dani for respondnet No.1.

Mr. Y.S.Shinde, APP for the State.

CORAM : J.H. BHATIA, J.

DATE : 12TH MARCH, 2007.

ORAL JDUGMENT.

. By this application, the applicant-original accused has challenged the order of conviction for the offence punishable under Section 494 r/w section 511 of Indian Penal code and sentence to suffer R.I. for one year and to pay fine of Rs. 500/- awarded by the Judicial Magistrate, Raigad in Regular Criminal Case No.62/1990.

2. The prosecution case, in brief, is that complainant Parvati was married to the present applicant

as per Hindu Customs and Rites on 28th December, 1984, After the marriage, she was living with the present applicant at village Walke for a period of about one year and two months. Thereafter the applicant began to harass her and she began to live separately and filed application for maintenance being Application No.15/1987, wherein the maintenance is granted to her. On 22/2/1990, the complainant came across an invitation card showing that the present applicant was going to be married with accused No.2 Lata and the marriage was going to be performed by accused No.8, who was to act as a priest. After getting the said invitation card the complainant,her brother Balaram Patil and maternal uncle Nagoji Chavarkar went to the house of said accused No.8 and informed him that her marriage with the applicant is still in subsistence. The accused No. 8 assured that he would not act as a priest in the said marriage. She also approached the relatives of Lata but they did not take cognizance of her grievance. She also approached the police station but no cognizance was taken. According to her, the present applicant had actually performed the marriage with accused No.2 Lata on 22nd February, 1990 at Laxmi Mangal Karyalaya at Chowk Naka. Thereafter, she filed the complaint against 16 persons

under section 494 r/w section 34 of Indian Penal Code. Accused Nos. 3 and 9 to 16 were discharged. Other accused were also acquitted of the offence. Only the present applicant, who was accused No.1, came to be convicted for the offence punishable under section 494 r/w section 511 and was sentenced as stated above. The applicant challenged the said order of conviction in Criminal Appeal No.24/1994, which also came to be dismissed by the Sessions Judge, Raigad. Therefore, the present applicant has preferred the present revision application.

3. Heard Mr.Deshmukh, learned Counsel for the applicant and Miss Sharvari Shailendra for respondent No..1, who is original complainant. Perused the record and proceeding of the Courts below, as well as judgments rendered by the trial court and appellate Court.

4. There is no dispute that the applicant and complainant were married in 1984 and their marriage is still in subsistence. The prosecution case is based on 4 witnesses. They include complainant Parvati, who is P.W.1 and P.W. 2 Nagoji Chavarkar, who is her maternal uncle. Evidence of these two witnesses clearly shows

that on 22nd February, 1990, the complaint got information and also came across an invitation card, which revealed that the applicant was going to marry accused No.2 Lata. Thereafter she immediately informed her brother and her maternal uncle. They went to accused NO.8, who was to act as a priest and also relatives of Lata. while accused No.8 assured that he would not preside over the marriage, the relatives of Lata did not take care of her complaint. P.W. 3 Balaram Chavarkar claims to be relative of the accused and according to him, he had received invitation of the marriage of the applicant and Lata and accordingly he attended the marriage at Laxmi Mangal Karyalaya. According to him, ceremonies of Saptapadi and Kanyadan were performed. The learned trial Court, as well as appellate Court relied upon the testimony of P.W.3 Balaram. Evidence of P.W. 4 Sahadeo, who is the Sarpach of the village, reveals that accused No.2 Lata is the wife of the applicant and out of the wedlock she has given birth to two children. The entries of birth of both the children were taken into birth register maintained by Gram Panchayat and the name of the present applicant is shown as husband of Lata. The Courts below did not place reliance upon the evidence of P.W.4,

mainly on the ground that he had taken the entry of birth of both the children after receiving summons from he Court to give evidence. Any how, relying on the testimony of P.W.3, the Courts below held that though it is not strictly proved that the second marriage was performed, it is proved that some ceremony was performed to complete the marriage and after that ceremony the applicant and his second wife Lata are living together, as husband and wife and they have also children from the said marriage. Relying on authority of this High Court in **Dilip V. State of Maharashtra 1997 (I) All M.R. 211** wherein it was held that when some ceremony of marriage are performed but the marriage is not proved strictly as per law, the accused can be convicted for the offence of attempt to commit the offence of bigamy. In view of this, he was convicted for the offence punishable under section 494 r/w section 511 of IPC.

5. The learned Counsel for the applicant conceded that taking into consideration the evidence on record it is difficult to challenge the finding of conviction. It may also be noted that the scope of revision application is very limited. The High Court while exercising the revisional jurisdiction does not sit in appeal over the

Judgment of the appellate Court. The revisional Court has only to examine the record to satisfy itself about the correctness, legality or propriety of the Judgment. I find that no fault can be found in the findings of the Courts below that accused has committed the offence.

6. The learned Counsel for the applicant prays for leniency on the ground that the offence was committed 17 years ago in February, 1990 and since then he is facing the hanging sword on his head. At present he appears to be aged about 45 years. According to him, as per the record the applicant was in custody from 9/4/1997 to 25/4/199 and he may be let of with the sentence as already undergone and only fine amount will be enhanced He offers to pay Rs. 25,000/- as compensation to the complainant and prays for reduction of sentence of imprisonment. To this, the learned Counsel for the complainant has no objection.

7. In view of the above, revision application is partly allowed, while conviction of the applicant for the offence under section 494 r/w section 511 is maintained the Sentence is modified as follows:-

. The accused/applicant shall undergo R.I. for three months and shall pay fine of Rs. 25,000/- in default to pay the fine he shall under go further S.I. for six months. He is given time of two months to pay fine amount. In case he makes payment of fine, amount of Rs.24,500/- shall be paid to complainant/respondent No.1 Parvati, as compensation. The applicant to surrender before the Chief Judicial Magistrate, Raigad to undergo sentence of imprisonment within two weeks.

(J.H. BHATIA, J.)